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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	DOCKET FILE COPY ORIGINAL
	)	
Implementation of Section 302 of the Telecommunications Act of 1996	)	
	)	CS Docket No. 96-46
Open Video Systems	)	

To the Commission:

REPLY TO
PETITIONS FOR RECONSIDERATION OF
MICHIGAN, ILLINOIS AND TEXAS COMMUNITIES CONSISTING OF:

Michigan: **City of Detroit, City of Grand Rapids, Ada Township, Alpine Township, City of Cadillac, Village of Chelsea, Village of Clinton, City of Coldwater, Coldwater Township, City of Garden City, Georgetown Charter Township, Grand Haven Charter Township, Grand Rapids Charter Township, City of Grandville, Harrison Township, Holland Township, City of Ishpeming, City of Kalamazoo, City of Kentwood, City of Livonia, City of Marquette, City of Petoskey, City of Plainwell, Richmond Township, Robinson Township, City of Romulus, City of Southfield, City of Westland, Whitewater Township, City of Wyoming, Zeeland Township, Southwest Oakland Cable Commission**

Illinois: **City of Aurora, City of Batavia, Illinois Chapter of the National Association of Telecommunications Officers and Advisors**

Texas: **City of Fort Worth, City of Arlington, City of Carrollton, City of Flower Mound, City of Grand Prairie, City of Irving, City of Longview, City of Plano**

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SUMMARY

Michigan, Illinois and Texas Communities ("MIT Communities") collectively represent approximately 8 million people and support the Petitions for Reconsideration filed by municipal and franchising authority interests in the Commission's Open Video Systems (OVS) rulemaking proceeding. MIT Communities support petitions which note that the Commission's Second Report and Order erred in concluding that revenues collected by unaffiliated video programmers are not subject to the OVS fee on gross revenues. MIT Communities agree with petitioners that assert the fee paid to franchising authorities by OVS operators must be based on all revenues generated from the OVS. Otherwise, a reduction of approximately two thirds of the fees paid communities by OVS operators, as opposed to those paid by conventional cable operators, will result. MIT Communities agree with the Commission that the revenue base on which OVS fees are computed includes subscriber revenues from affiliates of the OVS operator. In this regard, MIT Communities oppose the Petitions of Reconsideration of NYNEX and the Joint Parties which seek to have the Commission reverse its ruling and exclude such affiliate revenues. The Commission's rule is consistent with the Congressional intent of "parity" by precluding OVS operators from reducing the "fee in lieu of" to virtually nothing through the use of affiliates.

MIT Communities do not believe that the statutory language or the legislative history of the 1996 Telecommunications Act permits non-local exchange carriers to become OVS operators. MIT Communities oppose the petitions of cable interests which seek to completely and unconditionally

avoid existing franchise requirements. Congress did not express any intention to abrogate existing franchise obligations.

Moreover, the goal of the 1996 Telecommunications Act is to introduce and stimulate competition. Such goal is defeated if cable operators are allowed to switch to an OVS without the presence of effective competition. The 1996 Telecommunications Act clearly did not provide cable operators and other entities to have the same opportunity to utilize OVS as local exchange carriers. The Commission appropriately limited cable operators' access to the OVS alternative to circumstances where effective competition is present. Otherwise, cable operators would be able to further entrench their monopoly status to the detriment of new entrants.

MIT Communities oppose the petitions of cable interests which seek to have the Commission allow cable operators to switch to OVS upon expiration of current franchises, without the presence of effective competition. Congress did not grant cable operators the unfettered right to utilize OVS. The Commission must protect the public interest, convenience, and necessity and ensure that local needs are met. In the absence of competition, the Title VI franchising provisions are necessary to protect the public interest, convenience, and necessity.

MIT Communities disagree with the Commission's conclusion that the OVS operator can satisfy the same PEG access obligations as the local cable operator by simply connecting to the cable operator's cable access channel feeds and by sharing the costs directly related to supporting PEG access. Simply sharing costs is not matching the same PEG access requirements. Further, Congress did not intend to abrogate or reduce cable operators' existing contractual obligations with respect to PEG access. OVS should increase the local PEG access availability to subscribers. If cable

operators can avoid PEG requirements upon expiration of the local franchise, then OVS operators will likely contend that they need not provide any PEG access or support.

MIT Communities support the petitions submitted by franchising authorities which address the Second Report and Order's erroneous conclusion that communities cannot require cable operators to provide institutional networks.

MIT Communities oppose the petition of the Joint Parties which repeat arguments this Commission has already rejected concerning PEG channels corresponding to municipal boundaries. MIT Communities are aware of one of the Bell companies, namely Ameritech, which has the ability to build a cable system tailored not only to franchise area boundaries, but also to discrete subunits within a community.

MIT Communities respectfully request that the Commission reconsider its Second Report and Order and take into account the concerns of local franchising authorities.

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To the Commission:

REPLY TO
PETITIONS FOR RECONSIDERATION OF
MICHIGAN, ILLINOIS AND TEXAS COMMUNITIES

I. INTRODUCTION

A. MIT Communities and Their Interest In This Matter.

Michigan, Illinois and Texas communities ("MIT Communities") collectively represent approximately 8 million people. They are comprised of the following:

From Michigan, 31 municipalities,[1] plus the Southwest Oakland Cable Commission ("SWOCC") which is the cable franchising authority for the Cities of Farmington, Farmington Hills and Novi. From Illinois, the City of Aurora, the City of Batavia and the Illinois Chapter of the

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[1]City of Detroit, City of Grand Rapids, Ada Township, Alpine Township, City of Cadillac, Village of Chelsea, Village of Clinton, City of Coldwater, Coldwater Township, City of Garden City, Georgetown Charter Township, Grand Haven Charter Township, Grand Rapids Charter Township, City of Grandville, Harrison Township, Holland Township, City of Ishpeming, City of Kalamazoo, City of Kentwood, City of Livonia, City of Marquette, City of Petoskey, City of Plainwell, Richmond Township, Robinson Township, City of Romulus, City of Southfield, City of Westland, Whitewater Township, City of Wyoming, and Zeeland Township.

National Association of Telecommunications Officers and Advisors ("Illinois NATOA"), and from Texas, eight municipalities.[2]

Each of the municipalities and SWOCC is the franchising authority for cable television service in its area and has had a franchise[3] with its cable television operator for some time.

Illinois NATOA informs and participates in legislative, judicial, regulatory and technical developments that impact local governments in Illinois on cable and telecommunications matters. Its membership includes municipalities involved in and responsible for cable and telecommunications matters throughout the State of Illinois.

All the municipalities, SWOCC and Illinois NATOA, by their attorneys, pursuant to 47 C.F.R. § 1.429(g), submit this Reply to several petitions for the Commission to reconsider certain aspects of its May 31, 1996 Second Report and Order, CS Docket No. 96-46, FCC 96-249 (released June 3, 1996) ("Second Report and Order") in this proceeding.

B. Support Municipal Reconsideration Petitions.

MIT Communities support the Petitions for Reconsideration filed by the National League of Cities, the Alliance for Community Media, the City of Indianapolis, the Village of Schaumburg, Illinois, Metropolitan Dade County, and other municipal interests in this proceeding. MIT

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[2]City of Arlington, City of Carrollton, City of Flower Mound, City of Fort Worth, City of Grand Prairie, City of Irving, City of Longview, and the City of Plano.

[3]Communities sometimes use different terms for the permission given cable companies and others to use the local rights of way and to transact a local business. The term "franchise" is used in this Petition for Reconsideration in the same manner as it is used in Section 602(9) of the Communications Act (47 U.S.C. § 522(9)), namely meaning the initial or renewal authorization to construction and operate a cable system (or telephone system, as the case may be) even though its title may vary.

Communities do not repeat the arguments set forth in these petitions, although some specific points are commented on below.

II. FEES PAYABLE

A. Potential Two Thirds Fee Reduction Must Be Avoided.

MIT Communities support the position in the Petitions for Reconsideration of Metropolitan Dade County, Florida and the Village of Schaumburg, Illinois that the fee paid municipalities by OVS operators must be based on all revenues generated from the OVS system. Petition for Reconsideration, Second Report and Order, Open Video Systems, submitted by Metropolitan Dade County, at 3; Comments and Opposition to Certain Portions of FCC Second Report and Order regarding Open Video Systems (OVS) submitted by Village of Schaumburg, Illinois, at 2, ¶ 5.

Both Petitions correctly point out that the Commission's Second Report and Order erred in its conclusion at paragraph 220 that "revenues collected by unaffiliated video programmers" i.e. revenues paid by subscribers directly to a third party programmer not affiliated with the OVS provider -- are not subject to the OVS fee on gross revenues. Id; 47 C.F.R. § 76.1511 (implementing ¶ 220).

The Commission's ruling will be claimed to lead to a reduction of up to two thirds in the fees paid communities by OVS operators, as compared to those paid by conventional cable operators. Rule 76.1511 must be changed to include revenues from unaffiliated programmers to avoid the problems described below.

First, as is correctly described in the Petition for Reconsideration of the National League of Cities, et al the Commission's OVS rule creates serious Constitutional takings problems. Such

problems are created in part by the potential two thirds reduction in franchise fees described supra. Correcting this issue may aid in preventing the Commission's rules from being successfully challenged on Constitutional grounds.

Second, the Commission should be aware that cable operators will likely contend as follows: Their rights under the First Amendment are being impermissibly infringed upon if they have to pay a franchise fee on all programming they deliver, yet an OVS operator claims it pays fees on only one third of the programming delivered by its system (and claims it is relieved from various "franchise," regulatory and other requirements applicable to true cable systems). Again, correcting the preceding franchise fee problem will improve the likelihood that the Commission's OVS rules will withstand such a First Amendment Constitutional challenge.

Third, such actions are consistent with the Commission's Rule 76.1511, which requires OVS operators to pay fees on subscriber revenues from programming supplied by their affiliates.

Fourth, without such a charge the Commission will not have achieved the Congressional intent of "parity" of treatment on franchise fees for cable systems and OVS systems. See Conf. Rep. No. 104-458, 104 Cong. 2d Sess., 180 (January 31, 1996) (quoted at length below).

The Commission should therefore extend Rule 76.1511 to include subscriber revenues from programming supplied by unaffiliated programmers and must reject (as is described next) telephone industry challenges to the inclusion of their affiliates revenue in the base on which OVS fees are computed.

B. OVS Affiliate Revenues.

The Commission was correct in concluding that the revenue base on which OVS fees are computed includes subscriber revenues from affiliates of the OVS operator. Second Report and Order, ¶ 220; 47 C.F.R. § 75.1511. The Commission must reject the Petitions for Reconsideration of NYNEX and the Joint Parties which ask the Commission to reverse its ruling and exclude such affiliate revenues. See NYNEX Petition for Reconsiderations, at 3 and following; Petition of the Joint Parties for Reconsideration of the Second Report and Order, at 2 and following.

The Commission's current rule is correct because it achieves the Congressional intent and does not elevate form over substance. Granting NYNEX's and the Joint Parties' petitions would thwart the preceding two goals and increase the likelihood of a successful Constitutional challenge on takings grounds to the Commission's Rules, as described below.

First, the Conference Committee made clear that the goal of the "fee in lieu of franchise fee" of Section 653(c)(2)(B) is equality of treatment:

> "In another effort to insure parity among video providers, the Conferees state that such [fees in lieu of franchise] fees may only be assessed on revenues derived from comparable cable services and the rate at which such fees are imposed on operators of Open Video Systems may not exceed the rate at which franchise fees are imposed on any cable operator in the corresponding franchise area." Conf. Rep. 104-458, 104 Cong. 2d Sess., 178 (Jan. 31, 1996) [emphasis added].

The Congressional intent of "parity" or equal treatment on fees is achieved if the same franchise fee rate (e.g. 5%) is applied to the same revenue base.

The Commission's Rule achieves parity by preventing OVS operators from reducing their "fee in lieu of" to virtually nothing by the mere corporate structuring or "shell game" of (1) -- having the OVS operator supply essentially no services, and instead (2) -- having all services subscribers pay for supplied by its "affiliates." In this regard, the Petition for Reconsideration of NYNEX makes clear that NYNEX wishes to have Rule 76.1511 changed so it can engage in the preceding "shell game" of not itself providing any programming subscribers pay for, but instead having programming subscribers pay for supplied mainly by its affiliates.[4] NYNEX might implement such an approach by providing no programming itself or only limited "free" programming, such as a channel guide and PEG channels. Programming subscribers pay for would all be provided by its affiliates which would lease channel capacity from NYNEX at low rates.

The result of such an arrangement would be that OVS fees would be computed only on NYNEX's lease revenues from its affiliates, which would be nil. As a practical matter, NYNEX would claim that it and its affiliates have escaped the "fee in lieu of" described by Section 653.

The Commission's current Rule avoids the preceding problem. Rule 76.1511's inclusion of the subscriber revenues of OVS affiliates in the revenue base for OVS fees looks to the substance of matters as opposed to pure legal form or fiction. It prevents OVS operators from escaping the fees by mere "corporate shuffling" and instead focuses on the substance of the arrangement. Only

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[4] See, for example, the NYNEX Petition, at 4 where it describes as an option imposing fees on the gross revenue of the OVS operator, "if any," from providing its own video service [emphasis supplied]. And see its statement at page 5 that fees should only be paid "on the services provided to all video service programmers by the OVS operator." The exclusion of subscriber revenues from the preceding quotes is notable and indicates NYNEX's intent.

such a substance-based approach fulfills the regulatory "parity" intent of Congress clearly stated above.

Second, the Commission should be aware that its Rule is consistent with the definition of gross revenues adopted by many municipalities. In this regard, the Commission will note that the phrase "gross revenues" is not defined in Title VI. Cable franchises, however, customarily do define that term, to have clarity and avoid disputes on the definition of the revenue base against which franchise fees are applied.

Local franchising authorities frequently have addressed the same "shell game" problem that the Commission's Rule 76.1511 addresses by providing that the gross revenues of the cable operator include revenues received by it and by its affiliates. Such definitions have been included out of hard experience where a cable operator may attempt to reduce its franchise fees by having revenues channeled to an affiliated company.

Thus, the Commission's Rule fulfills the Congressional intent of "parity" by imposing a revenue definition consistent with that adopted by local franchising authorities.

Third, as described above, if the petitions of NYNEX and the Joint Parties on this point are accepted, the fees under Section 653 might well drop to nil. Such result would exacerbate the serious Constitutional takings problems in the Commission's OVS rules, described above. The Commission should not adopt changes which increase the likelihood of such a successful challenge.

III. THE COMMISSION MUST NOT ALLOW CABLE OPERATORS TO BECOME OVS OPERATORS AND AVOID FRANCHISE OBLIGATIONS

MIT Communities, in their Petition for Reconsideration, have shown that the statutory language and the legislative history of 1996 Telecommunications Act do not permit entities other than local exchange carriers ("LECs") to become OVS operators. See MIT Communities Petition for Reconsideration, at 7-9. The Commission erred in concluding that a non-LEC can switch to the OVS alternative. Nevertheless, the Commission could further compound such error by agreeing with the petitions for reconsideration and clarification put forward by cable interests. The petitions of National Cable Television Association ("NCTA") (at 6-9), and US West (at 3-4), and Cox Cablevision (at 2-5) seek to completely and unconditionally avoid existing franchise requirements.

Although the Commission's Second Report and Order generally does not allow a cable operator to abrogate the terms of existing franchise agreements, cable interests now seek to improperly read such a provision into the 1996 Telecommunications Act. In addition, cable interests now acknowledge that they will utilize the OVS alternative at the time of franchise renewal to avoid future franchise obligations. See e.g. Petitions of Comcast Cablevision, at 5-8; US West, at 3-4.

MIT Communities respectfully request that the Commission reject the petitions for reconsideration or clarification which suggest that cable operators can avoid franchise obligations.

A. The Commission's Application of the Effective Competition Test Is Appropriate.

The Commission must reject the position of cable industry petitions which oppose the Commission's limitation of allowing cable operators to switch to an OVS only when effective competition is present. Although MIT Communities disagree with the Commission's conclusion

that cable operators can become OVS operators, MIT Communities concur with the Commission's decision that Section 653 does not give cable operators and others the same standing as LECs with respect to the OVS alternative.

The Commission correctly recognizes that the promotion of competition in telecommunications markets was a stated Congressional goal in promulgating the 1996 Telecommunications Act. Second Report and Order, at ¶ 19. The Commission properly limited the ability of cable operators to switch to OVS until competition is actually present in the franchising area. The position of cable industry petitioners (such as Cox Communications and NCTA) is over-reaching and contrary to the language and intent of the 1996 Telecommunications Act. Such petitions fail to demonstrate how cable operator conversion into OVS, absent effective competition, would introduce and stimulate new entrants and competition.

The Commission placed an understandable and necessary limit on cable operators switching to OVS in the Second Report and Order. Nothing in the 1996 Telecommunications Act indicates that Congress meant to give cable operators the unfettered right to switch to OVS. The Commission properly uses the effective competition definition in Section 623(1)(1) to limit a cable operator's opportunity to become an OVS operator in its franchise area. Otherwise, cable operators could simply convert to or build an OVS in the same franchise area and effectively avoid franchise requirements which serve the public interest, convenience, and necessity.

If Congress did indeed intend to allow the Commission to develop regulations which permit cable operators to become OVS,[5] then it certainly limited the Commission's ability to do so in the plain language of Section 653(a)(1) by referencing the "public interest, convenience and necessity." The Commission in its proper discretion, has found that the public interest, convenience and necessity are not served by allowing a cable operator to switch to an OVS without the presence of effective competition. It is within the Commission's authority to make findings as to what is in the public interest, convenience and necessity. Congress sought to use OVS as a method to introduce competition in entertainment and video markets. See e.g. Conf. Rep. No. 104-458, 104 Cong. 2d Sess. 178 (Jan. 31, 1996). OVS was not created to allow cable operators to circumvent Title VI and local franchising requirements without any hindrance.

B. Congress Did Not Intend To Abrogate Existing Franchise Agreements.

Nothing in the 1996 Telecommunications Act indicates that Congress intended to abrogate existing franchise agreement obligations for cable operators. The Comcast petition argues, without citation, that "Congress effectively rescinded the authority of franchising authorities to 'enforce' certain franchise provisions regulating services, facilities and equipment, notwithstanding their contractual status." Comcast Petition at 6 [emphasis in original]. This statement is without merit. No express Congressional statement supports the rescission or abrogation of existing franchise agreements. Again, the goal of the 1996 Telecommunications Act is competition, not the defeat of franchise obligations. The Commission cannot modify or rescind existing contractual obligations

[5]Again, MIT Communities respectfully submit that Congress did not intend to allow non-LECs, including cable operators, to be OVS operators.

without a clear, unequivocal statement by Congress. No such statement appears in the 1996 Telecommunications Act or its legislative history.

If the Commission were to adopt the position of the cable petitions which seek to abrogate existing franchise agreements, it certainly is inviting Constitutional challenge.

C. The Commission Must Not Allow Cable Operators To Switch To OVS Upon Expiration Of A Current Franchise.

The Commission noted, "that it is not in the public interest to permit incumbent cable operators, in the absence of competition, to convert their cable systems to open video systems." Second Report and Order, at ¶ 24. Despite this, US West and Comcast divulge the intention to avoid franchise obligations once current franchises expire. The cable petitions conveniently ignore the fact that Congress intended OVS to stimulate competition, not just reduce regulatory burdens. The reduction in regulation was meant to be an inducement to introduce competition into existing cable service areas -- not a quid pro quo for opening two thirds of the programming when demand exceeds capacity.

It is disingenuous for cable interests to argue that they should have their cake and eat it too. Simply put, incumbent cable operators are not placed at a competitive disadvantage by fulfilling franchise obligations as well as opening up two thirds of the system under certain circumstances. The Commission cannot ignore the tremendous advantage incumbent cable operators, which in the vast majority of cases are monopolies, have over new entrants.

Moreover, as is discussed below, if cable operators can eliminate franchise obligations, such as PEG access channel provision and support, and I-NETs, then OVS operators may similarly avoid

such requirements. Congress did not intend such a result. The public interest, convenience, and necessity are served by PEG access and other franchise requirements. The Commission's rules must protect such items.

IV. OVS OPERATORS MUST NEGOTIATE WITH THE RELEVANT LOCAL FRANCHISING AUTHORITY AND THEN MATCH, NOT SHARE, THE PEG REQUIREMENTS OF THE INCUMBENT CABLE OPERATOR

MIT Communities disagree with the Commission that the OVS operator can satisfy the same PEG access obligations as the local cable operator by simply connecting to the cable operator's PEG access channel feeds and by sharing the costs directly related to supporting PEG access. Second Report and Order, at ¶ 141 Simply sharing costs is not satisfying the same PEG access requirements. Moreover, Congress did not intend to reduce PEG access when OVS is introduced.

The Commission cannot abrogate existing franchise agreements with respect to PEG access requirements by allowing a party (i.e. the cable operator) to reduce its contractual obligation. Congress did not express any intention to affect existing franchises in such manner. Indeed, OVS should increase the local PEG access availability to subscribers.

Further, the Commission's position leaves the OVS operator with the opportunity to have a more beneficial result if the OVS operator fails to reach an agreement with the franchising authority. There is no incentive for the OVS operator to successfully complete negotiations for PEG access with the franchising authority. In addition, the Commission notes that the OVS PEG obligations change to the extent that the cable operator's PEG access obligations change with franchise renewal. Second Report and Order, at ¶ 150. If the Commission accepts the position of cable interests which assert that upon franchise termination or renewal cable operators can escape

franchise obligations by converting to an OVS, then there will no longer be cable television PEG obligations in the franchising area, and the OVS operator will claim it need not satisfy any PEG requirements. This result is plainly contrary to the 1996 Telecommunications Act as well as the Communications Act.

MIT Communities support the petitions of National League of Cities et al (at 14-16) and Alliance for Community Media et al (at 5-6) which show that OVS operators must provide additional support to match the cable operator's franchise obligations, not purely share the preexisting requirements.

Congress has clearly indicated that local franchising authorities are best-suited to ascertain the community needs and interests with respect to PEG access. Now, the Commission's OVS rules may impermissibly intrude into that relationship.

MIT Communities respectfully submit to the Commission that simply interconnecting is not the same as matching PEG access.

V. INSTITUTIONAL NETWORKS

Several of the petitions submitted by municipalities address the Second Report and Order's erroneous conclusion that communities cannot require cable operators to provide institutional networks (and ask that the Commission's rules be changed on this point). See Petition for Reconsideration and Clarification of Alliance for Community Media, at 7; Petition for Reconsideration of the National League of Cities, at 15-16. MIT Communities addressed the same point at length in their Petition for Reconsideration.

In this regard, the City of Alexandria franchise attached to the National League of Cities Petition for Reconsideration gives a good example of an institutional network and shows that they are required by municipalities (and are not simply "voluntary" as the Second Report and Order suggests).

Thus, the cable television franchise between the City of Alexandria, Virginia and Jones Intercable of Alexandria makes extensive provisions for institutional networks at pages 17-22. The franchise is replete with the mandatory requirement that the cable operator "shall" provide such a network, stating that "the franchisee shall make available, at a cost to the City of no more than one dollar ($1.00) per year, an optical fiber communications system with a minimum transmission capacity of 2.4 GHz per second . . ." (Section 5(b)(1)); and setting forth specifications to which "the institutional network shall be designed, operated and maintained by Franchisee" (Section 5(b)(2)), and the like.

The specifications include, among other things, a one hundred megabytes per second Ethernet network; six 6 MHz upstream channels for schools; two 6 MHz upstream channels for a community college; one 6 MHz upstream channel for a library; two 6 MHz upstream channels for City Hall; two 6 MHz channels for the Courthouse and Public Safety Center and the like.

Although the marginal cost of installing such capacity along with a cable system is significantly less than that of constructing a stand-alone institutional network, it nonetheless has a cost. Cable operators such as Jones provide institutional networks because they are required to do so, not because it is voluntary. The Commission's conclusion to the contrary is incorrect.

VI. OVS PEG CHANNELS MUST BE ON A FRANCHISE AREA BY FRANCHISE AREA BASIS

The Joint Parties (Bell Atlantic, Bell South, GTE, Lincoln Telephone, Pacific Bell and Southwestern Bell) repeat the arguments which this Commission soundly (and properly) rejected that OVS operators' PEG channels need not correspond to municipal boundaries. See Petition of Joint Parties, at 14 and following. The Joint Parties then use this as a springboard to argue that in certain situations, a homogenized or lesser PEG obligation than that provided by the cable operator should suffice. And the Petition characterizes it as simply cable operator "claims" that they are able to configure their systems that overlap several communities so as to satisfy multiple PEG obligations, suggesting the truth is different.

MIT Communities would like to set the record straight by noting that one of the regional Bell companies -- Ameritech -- in fact is building cable systems where it expressly sets forth its ability to tailor its system to deliver multiple PEG channels not only on a franchise by franchise area basis, but to discrete subunits within a community. In presentations to communities, Ameritech notes this capability as one of the major advantages of its cable system. The following is a provision from the City of Garden City, Michigan 1996 cable franchise agreement with Ameritech New Media Enterprises which provides at follows at page 49:

> "Subscribers shall be grouped into nodes that are arranged geographically. Node sizing shall average no more than 500 homes served. From each node, coaxial cable shall be used to carry upstream and downstream communication back to the [video end office]. . . .
>
> "The nodes shall be so arranged, or if necessary rearranged, so that the subscribers served by each correspond with both the corporate

> boundaries of counties, cities, villages and townships (including those of City) and school district boundaries such that each individual subscriber receives only the PEG or other local channels corresponding to the county, city, village and school district in which that subscriber is located."

The Commission should be aware that in Michigan, as in many other states, school district and other boundaries (such as those for community colleges) do not necessary follow municipal corporate boundaries. This is in addition to PEG and other requirements varying significantly from municipality to municipality.

The preceding language shows that it is more than a cable company "claim" that they can tailor a video system to meet differing PEG requirements in multiple municipalities: One of the major Bell companies has found no difficulty in doing the same as well, has extended this concept to the point where subscribers get only the educational (or community college) channel applicable to them, and is willing to embody the preceding in franchise agreements. The communities being served were given to understand that it was not difficult for Ameritech to make the preceding arrangements given the use of "node" architecture (now used on all new video delivery systems) and the high capacity of the fiber optic cables connecting the nodes.

The preceding facts show that the predicate for Joint Parties' request for a "third option" to satisfy PEG requirements is simply incorrect. Their request must thus be rejected.

VII. CONCLUSION

In light of the foregoing, MIT Communities respectfully submit this Reply to support the petitions of franchising authorities and to oppose certain petitions which seek to misconstrue the 1996 Telecommunications Act to the detriment of the public interest, convenience, and necessity.

Respectfully submitted,

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July 13, 1996

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CERTIFICATE OF SERVICE

I, Nikki L. Klungle, hereby certify that on this 13th day of July, 1996, I caused copies of the foregoing "Reply to Petitions for Reconsideration of Michigan, Illinois, Texas Communities" to be sent by first-class mail, postage prepaid to the following:

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